The duty of the court is to consider the interests of the persons affected by the objection. See s 44(1). That, to my mind, includes persons who have consented without protest to receive payment of compensation should there be any likelihood of the court reducing the amount of compensation. It is true that it is expressly provided in s 44(2) that the court shall consider the interest of all persons interested who have not accepted the award, whether those persons have themselves made an objection or not. That does not mean to say that the court is precluded from considering the interests of those who have consented without protest.

It is provided in s 45(2) that unless inconsistent with anything contained in the Act, the provisions of the law for the time being in force relating to civil procedure shall apply to all proceedings before the court under the act. That brings in the Rules of the High Court 1980 under which there is ample provision for the court on application or on its own motion to bring into the proceedings all interested parties. See O 15 r 6 of those Rules. That is in fact what happened in the case of *Setiausaha Tetap Kementerian Pelajaran*[2] above-stated.

In the end, to my mind, it boils down to this. The plaintiffs having accepted without protest and consented to the Collector's offer, cannot now have their claim referred to the court. However, should there be a proper objection to the award, they are not precluded from defending the award and consequently the offer. The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Abdul Razak & Co.*

Reported by *Zarinah Marican*

Sequerah Stephen Patrick (Mrs) v Penang Port Commission

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24-273-89
WAN ADNAN J
22 FEBRUARY 1990

Tort — Damages — Limitation of liability — Collapse of public jetty — Negligence — Power of High Court to make orders with respect to claims for damages under s 77 of Penang Port Commission Act 1955 — Penang Port Commission Act 1955, ss 73, 74 & 77

Public Authorities — Liability for damages — Negligence — Collapse of public jetty — Limitation of liability — Applicability of s 77 of Penang Port Commission Act 1955 — Penang Port Commission Act 1955, ss 73, 74 & 77

Several suits had been filed against the Penang Port Commission for damages as a result of the collapse of Pangkalan Sultan Abdul Halim Butterworth. Upon an ex parte application by the Commission under s 77 of the Penang Port Commission Act 1955, the High Court granted orders with respect to the proceedings for claims for damages. The applicant applied to set aside these orders on the ground that the court has no power to make them.

Held, allowing the application:
Section 77 of the Act must be read with the preceding sections, ie ss 72, 73, 74, 75 and 76. The words 'any liability is alleged to have been incurred by the Commission' must refer to liability under ss 73 and 74. But the claims now being brought are for damages in connection with the collapse alleged to have been caused by the negligence of the commission. They are not claims under ss 73 and 74 of the Act. Section 77 therefore does not apply in this case. Its application is limited to liability alleged to have been incurred under ss 73 and 74 of the Act.

[*Editorial Note*: The respondent has appealed to the Supreme Court vide Civil Appeal No 02-52-90.]

Legislation referred to
Penang Port Commission Act 1955 ss 72, 73, 74, 75, 76, 77

K Balasundaram for the applicant.
Margaret Kam for the respondent.

Cur Adv Vult

Wan Adnan J: On 31 July 1988, part of the Penang Port Commission's ('the Commission') upper deck of Pangkalan Sultan Abdul Halim Butterworth collapsed ('the collapse'). In consequence, many suits and actions had been filed in the courts against the Commission claiming damages. On 22 April 1989, upon an ex parte application by the Commission under s 77 of the Penang Port Commission Act 1955 ('the Act'), the following orders were made:

1 All proceedings pending or may be pending after the date hereof in any court in relation to the above-mentioned collapse of part of the upper deck of Pangkalan Sultan Abdul Halim Butterworth on 31 July 1988 be stayed until further order.

2 That the question of liability and the amount of the Commission's liability if any in this matter will be inter

partes. Towards this end, the applicant shall within 21 days from the date hereof apply for further directions as to the future conduct of the pending proceedings.

On 4 October 1989, the following further orders were made on another ex parte application by the Commission:

(1) Each person claiming damages or other relief against the Penang Port Commission arising out of the collapse of part of the upper deck of Pangkalan Sultan Abdul Halim Butterworth on 31 July 1988, shall within the period of six calendar months from the date of the last publication of the advertisement in para (2) send to the High Court of Malaya at Penang written particulars containing:

(a) his or her name, age and address;
(b) the name and address of any solicitor, if any, acting on his or her behalf; and
(c) identifying the proceedings, if any, which at the date hereof have been commenced against the Penang Port commission.

(2) Any person who does not comply with the direction set out in para (1) hereof shall be excluded and prevented from making any claim or obtaining any award of damages or obtaining other relief in the proceedings against the Penang Port Commission to be determined by the High Court of Malaya at Penang pursuant to an order made by the said court on 22 April 1989 under s 77 of the Penang Port Commission Act 1955.

(3) The Penang Port Commission shall, within a period of 28 days from the date hereof, cause the directions contained in paras (1) and (2) hereof to be published in:
(a) the Malayan Law Journal
(b) a Bahasa Malaysia daily
(c) an English daily
(d) a Chinese daily
(e) a Tamil daily

The applicant herein, Mrs Stephen Patrick Sequerah nee Elizabeth Ooi, is the plaintiff in Penang High Court Civil Suit No 22(25)-51-88, one of the suits brought against the Commission for damages in connection with the collapse. By this application, she is asking to set aside the said ex parte orders on the ground that the court had no power to make them.

Section 77 of the Act reads as follows:

> Where any liability is alleged to have been incurred by the Commission in respect of loss of life, personal injury, or loss of or damage to vessels, vehicles, animals, goods or other things whatsoever, and several claims are made or apprehended in respect of that liability, then the Commission may apply to the High Court, and that Court may determine the amount of the Commission's liability and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such regulations, and as to the exclusion of any claimants, who do not come in within a certain time and as to requiring security from the Commission, and as to payment of any costs as the Court thinks just.

This section comes under 'Part VI Limitation of Liability' of the Act. The sections preceding to s 77 under this part are from s 71. Section 71 gives the definition of 'ship'. Section 72 excludes liability of the Commission from any loss or damage happening without its actual fault or privity in respect of goods or other things on board any of its ships. Section 73 puts a limitation on the Commission's liability in certain cases. The limitation provided is as follows:

> The Commission shall not, where all or any of the following occurrences take place without its actual fault or privity:
>
> ...
>
> be liable to damage beyond the following *amounts*: (emphasis is added)
>
> (i) in respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, vehicles, animals, goods or other things, an aggregate amount not exceeding in the currency of Malaysia the equivalent of fifteen pounds sterling for each ton of its ship's tonnage; and
> (ii) in respect of loss of or damage to vessels, vehicles, animals, goods or other things, whether injury or not, an aggregate amount not exceeding in the currency of Malaysia the equivalent of eight pounds sterling for each ton of its ship's tonnage.

Section 74 provides for the limitation of the Commission's liability in cases other than those covered under ss 72 and 73. The Commission shall not 'be liable to damages beyond an aggregate *amount* not exceeding the currency of Malaysia the equivalent of eight pounds sterling for each ton of the tonnage of the largest registered British ship ...' (emphasis is added).

Section 75 provides the manner of ascertaining the tonnage of ships for the purposes of this part of the Act and s 76 provides for the limitation of liability under this part to relate to losses and damages arising upon any one distinct occasion though the losses and damages may be sustained by more than one person.

In the cases mentioned in s 72 of the Act, the Commission cannot be made liable at all. In cases under ss 73 and 74, the Commission can be made liable but not beyond the amounts specified in the sections.

In my view, s 77 must be read with the preceding sections I have mentioned above. 'Any liability is alleged to have been incurred by the Commission' must refer to any liability under ss 73 and 74. When several claims are made in respect of that liability, the High Court may exercise the powers given under the section the first of which is to determine 'the *amount* of the Commission's liability ...' (emphasis is added). The method of determining the maximum amount of liability is provided for in ss 73 and 74. Under this s 77, the court determines the quantum of the Commission's liability and after having so determined may distribute the amount rateably among the several claimants.

The claims now being brought against the Commission including the claim by the applicant herein are claims

for damages in connection with the collapse alleged to have been caused by the negligence of the Commission. They are not claims under ss 73 and 74 of the Act. In my view, s 77 does not apply. Section 77 is not for general application. Its application is limited to liability alleged to have been incurred under ss 73 and 74 of the Act.

I therefore allowed the application and set aside the ex parte orders made on 22 April 1989 and 4 October 1989. I also ordered the costs of this application to be paid by the Commission.

Application allowed.

Solicitors: *Balasundaram & Co; Kam & See.*

Reported by *Zarinah Marican*

Syarikat Gam Bee & Sons Trading & Construction v Joseph Au Kong Weng

HIGH COURT (KUANTAN) — PETITION NO 17-2-89
LAMIN J
20 FEBRUARY 1990

Legal Profession — Bill of costs — Petition for delivery of for taxation — Bill delivered more than one year ago — Whether bill unfair or unreasonable — Delay in filing application — Lump sum bills — Legal Profession Act 1976, s 126

The petitioner was not satisfied with the amount of fees charged by the respondent for services rendered to the petitioner as its counsel in a suit in 1986. The petition was filed praying that the respondent be ordered to deliver a bill of costs so that it may be taxed. The petitioner claimed that the respondent had agreed that his remuneration would be 12 1/2% of the claim from the money recovered, and should the claim fail, there would be no charge. The respondent deposed in his affidavit that the fees was agreed at $16,342.81 exclusive of disbursements. He also confirmed that the petitioner had paid $10,000 towards settlement of the fees, and up to 9 February 1988, only a sum of $2,843.81 was due on the fees and $387.10 for disbursements.

Held, dismissing the petition with costs:

(1) The petitioner has not shown at any time that the fees had been overcharged. Further he had not categorically denied that $10,000 had been paid towards the settlement of the fees or that there is now only a balance of $2,843.81 due on the fees and $387.10 for disbursements.

(2) More than a year and nine months had passed before the petitioner filed this complaint. No reasons were given to explain why it was filed more than a year later. It is now too late in the day to complain that the lump sum bills were not contained in a written agreement as required by the Legal Profession Act 1976.

[*Editorial Note*: The petitioner has appealed to the Supreme Court vide Civil Appeal No 03-380 of 1989.]

Cases referred to

1 *Haw Par Brothers International Ltd* v *Harry Lee Wee* [1980] 2 MLJ 8 (distd)
2 *Cole* v *Park* (1889) 41 Ch D 326 (refd)

Legislation referred to

Legal Profession Act 1976 s 126

S Siva Subramaniam for the petitioner.
Respondent in person.

Cur Adv Vult

Lamin J: The petitioner in this case is not satisfied with the amount of fees charged by the respondent for services rendered to the petitioner as its counsel in Kuantan High Court Civil Suit No 22-5-86 and it has therefore filed the present petition praying that the respondent be ordered to deliver to the petitioner's present solicitors a bill of costs in respect of the said Kuantan High Court civil suit together with all the related papers so that the said bill of costs may be presented before the senior assistant registrar to be taxed. The parties of the present petition appeared before me on 12 September 1989 and I dismissed the petition with costs. The petitioner now appeals.

The brief background of the present petition is as follows. The respondent was retained by the petitioner in early 1986 with the instruction to file a claim against (a) Raffah Sdn Bhd, (b) Bina Utama Sdn Bhd and (c) Hee Then Shoong for work done in the sum of $130,742.45. The respondent, accordingly, on 14 March 1986 filed a civil suit vide Kuantan High Court Civil Suit No 22-5-86. On 15 May 1987, consent judgment for $120,742.45 was entered only against the first and second defendants. The suit against the third defendant is still pending. In the supporting affidavit, the petitioner claimed that the respondent agreed with the petitioner that the respondent's remuneration or fees would be 12 1/2% of the claim from the money recovered from the said defendants and should the claim fail the respondent would not charge the petitioner. In his argument in support of the petition, counsel for the petitioner cited the case of *Haw Par Brothers International Ltd* v *Harry Lee Wee*[1] where the solicitors' bill of costs was ordered to be taxed and on appeal the order was confirmed. The respondent appearing in person replied that in the *Haw Par Brothers* case,[1] the bill concerned was grossly overcharged. He maintained that the petitioner agreed to pay the costs at 12 1/2% amounting to $16,342.81. So the question to be asked in the present case, he argued, was whether there was an overcharge in the fees so as to warrant an intervention by the court. The petitioner had not shown that the fees had been overcharged. The respondent further argued that if there was no objection to a bill of costs after a lapse of six months, the client would be deemed to have agreed with the bill. The respondent referred to s 126 of the Legal Profession Act 1976 and also the case of *Cole* v *Park*.[2] In *Cole* v *Park*,[2] Stirling J had this to say at pp 333-334: